



## LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

### *MGM STUDIOS V. GROKSTER (2005)*

MONDAY, JANUARY 26, 2009

#### OVERVIEW

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Tina Fey, accepting a Screen Actor's Guild Award in January 2009, joked about not receiving "residuals" (or payment) for broadcasts of "30-Rock" on the Internet. But is it a laughing matter? The Internet has brought serious challenges to intellectual property, and to those who make their living as actors, directors, writers, and musicians. This month's Landmark Supreme Court Cases and the Constitution focuses on *MGM Studios v. Grokster* (2005), in which the Supreme Court was asked if companies that produce Internet software expressly designed to let users to "file swap" or share copyrighted music with others who had not paid for it were responsible for the copyright infringement that resulted. The Supreme Court unanimously said yes.

#### RESOURCES

- [http://www.oyez.org/cases/2000-2009/2004/2004\\_04\\_480/](http://www.oyez.org/cases/2000-2009/2004/2004_04_480/)
- <http://www.copyright.gov/docs/mgm/index.html>
- <http://www.law.cornell.edu/supct/html/04-480.ZS.html>
- <http://constitutionbee.org/user/StudentGuide.aspx?id=764>

#### ACTIVITY

When peer-to-peer file sharing software came on the scene in the late twentieth century, Internet users were downloading music for free on Web sites such as Napster, KaZaA, and Grokster millions of times a day. MGM and several music studios sued one of these Web sites, Grokster, saying that 90% of what was available on the site was copyrighted material. Therefore, according to MGM, Grokster was responsible for the copyright infringement was occurring every time Internet users exchanged the files with no payment being made to the original artist and studio. It amounted to millions of violations.

Grokster did not deny that copyright was being infringed, but it argued that it wasn't responsible for it. Grokster did not have an index of music files that people could search. Rather, individual users kept indexes of music on their own computers, and therefore Grokster said it wouldn't know about any copyright infringement until it had already happened. Finally, Grokster argued that its software could be used legally.

The Constitution gives Congress the power to "promote the progress of the useful arts" by granting copyrights and patents "for limited times" to artists, authors, inventors, and musicians (Article I, Section 8). Musicians, filmmakers, actors, and other creative individuals have a right to the fruits of their labor. They have the right to earn a living by trading on their intellectual property protected by copyright. The Grokster software was expressly designed to share files. But was it Grokster's fault that people were using its software to infringe on copyright?

The Court said yes—if the company encouraged copyright infringement or if the software was expressly described for this purpose. The Court's ruling was unanimous.

The Court held: "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." Because the copyright infringement was on such a large scale, involving millions of people, the only "only practical alternative" was to hold the software companies liable.



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### COMPREHENSION AND CRITICAL THINKING QUESTIONS

1. What was the constitutional question before the Supreme Court in *MGM Studios v. Grokster*?
2. How did the Court rule?
3. Do you agree with the Court's ruling?
4. There is often the expectation that everything on the Internet is "free." What are some consequences of this to our society?
5. What will happen to the quality and amount of music our culture produces if musicians cannot be sure they will be paid for their work?

### Extension

Have students complete a lesson from the Bill of Rights Institute's newest curriculum, Property Rights in America: Yours, Mine, or Ours. Download a free lesson on intellectual property by visiting <http://www.billofrightsinstitute.org/instructional/SampleUnits/processSample.asp?id=58>.



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#### ANSWERS

1. Are companies that produce Internet software expressly designed to let users to “file swap” or share copyrighted music with others who had not paid for it responsible for the copyright infringement that results?
2. The Court unanimously held that Grokster was liable for copyright infringement. The Court held: “one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.”
3. Some students will agree with the ruling. Others will say that if Grokster’s software could be used legally, then it should not be responsible when users violate copyright.
4. If no one pays for anything, then no one gets paid for anything. Industries and individuals who make their living doing something that can be easily taken, posted Online, and made available for free (such as musicians, filmmakers, writers, and publishers) have their livelihoods seriously threatened. Further, people who enjoy music, films, newspapers, books, and other forms of creative expression have their quality of life seriously threatened as these valuable forms of art begin to disappear.
5. Students may say that these individuals will stop producing if they will not be paid for their work. They will find other ways to earn a living, or they will move elsewhere. The consequences to our society will be huge.